SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1901.

No. 566.

THE UNITED STATES, APPELLANT,

vs.

ARTHUR B. BARRINGER.

APPEAL FROM THE COURT OF CLAIMS.

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1 Court of Claims.

ARTHUR B. BARRINGER
vs.
THE UNITED STATES. } No. 21940.

I.—*Petition.*

The claimant, on the 20th day of June, 1900, filed his preliminary petition.

On July 26, 1900, the claimant, by leave of court filed his completed petition, which is as follows:

To the honorable the Court of Claims:

The claimant, Arthur B. Barringer, respectfully represents:

The claimant has been at five different times within six years last past a compositor in the Government Printing Office, serving at each time of his employment for a fractional part of a year. The periods during which he was so temporarily employed were as follows:

December 31, 1895, to February 26, 1896, inclusive.
July 2, 1897, to July 31, 1897, inclusive.
December 10, 1897, to July 16, 1898, inclusive.
October 24, 1898, to March 4, 1899, inclusive.
October 28, 1899, to April 27, 1900, inclusive.

2 By the provisions of paragraph 10 of the act entitled "An act making appropriations for sundry civil expenses of the Government for the fiscal year ending June 30, 1897, and for other purposes," approved June 11, 1896, Supplement to Revised Statutes, volume 2, page 526, he became entitled during each period of his employment to leave of absence, with pay, for thirty days in each fiscal year, or to pay for pro rata leave for any unused leave of absence. He was not, however, during any of the times of his employment as aforesaid allowed any leave of absence or any pay pro rata for unused leaves of absence.

He has made application to the Public Printer, and the Auditor for the State and Other Departments, respectively, for pro rata payment for his unused leaves of absence, but both have declined to allow him the same, the former on the ground that temporary employees have never been allowed leaves of absence, and the latter on the ground that he had no records in the office throwing light on the claim.

During the entire period of his service he was paid at the rate of four dollars and twenty cents ($4.20) per day. He claims pay for a total of one (1) year eight (8) months and twelve (12) days of work at thirty (30) days each year, amounting in all to fifty-one (51) days, at four dollars and twenty cents ($4.20) a day, amounting to two hundred and fourteen dollars and twenty cents ($214.20).

No other action than as aforesaid has been had on this claim in Congress or by any of the Departments.

The claimant is the sole owner of this claim and the only person interested therein; and no assignment or transfer of this claim, or of any part thereof or interest therein, has been made.

The claimant is justly entitled to the amount herein claimed from the United States, after allowing all just credits and offsets. The claimant

is a citizen of the United States, and has at all times borne true allegiance to the Government thereof, and has not in any way voluntarily aided, abetted or given encouragement to rebellion against the said Government; and the claimant believes the facts as stated in this petition to be true. And the claimant claims two hundred and fourteen dollars and twenty cents ($214.20).

GEORGE A. & WM. B. KING,
Attorneys for Claimant.

DISTRICT OF COLUMBIA, *ss:*

George A. King, being duly sworn, deposes and says: I am one of the attorneys for the claimant in this case. I have read the above petition, and the matters therein stated are true, to the best of my knowledge and belief.

GEORGE A. KING.

Subscribed and sworn to before me this 24th day of July, 1900.

MARTHA M. BECK,
Notary Public.

3 II.—*Traverse. Filed October 22, 1901.*

And now comes the Attorney-General, on behalf of the United States, and answering the petition of the claimant herein, denies each and every allegation therein contained; and asks judgment that the petition be dismissed.

And as to so much of the said petition as avers that the said claimant has at all times borne true faith and allegiance to the Government of the United States, and has not in any way voluntarily aided, abetted, or given encouragement to rebellion against the said Government, the Attorney-General, in pursuance of the statute in such case provided, denies the said allegations, and asks judgment accordingly.

L. A. PRADT,
Assist. Attorney-General.

4 III—*Findings of fact and conclusion of law (as amended), filed December 2, 1901.*

This case having been heard by the Court of Claims, the court, upon the evidence, makes the following

FINDINGS OF FACT:

I.

The claimant, Arthur B. Barringer, was from time to time employed as a compositor in the Government Printing Office during the following periods:

December 31, 1895, to February 26, 1896, inclusive;
July 2, 1897, to July 31, 1897, inclusive;
December 10, 1897, to July 16, 1898, inclusive;
October 24, 1898, to March 4, 1899, inclusive;
October 28, 1899, to April 27, 1900, inclusive,

aggregating one (1) year eight (8) months and twelve (12) days.

II.

During his term of service as such he was paid at the rate of three dollars and twenty cents ($3.20) per diem of eight hours for the time served prior to July 1, 1899, amounting to one (1) year two (2) months and twelve (12) days, and at the rate of four dollars ($4) a day for such service rendered after July 1, 1899, amounting to six (6) months.

III.

He was not during any of the times of his employment allowed leave of absence or pro rata pay for leave of absence. If allowed leave of absence of thirty (30) days a year, he would have been entitled to fifty-one (51) days' leave.

If instead of taking such leave he had been paid pro rata for the same, he would have been paid three dollars and twenty cents ($3.20) a day for thirty-six (36) days and four dollars ($4) a day for fifteen (15) days, amounting to one hundred and seventy-five dollars and twenty cents ($175.20).

IV.

The claimant did not, at any time during his several terms of service, set forth in finding I, apply for a leave of absence or for a money equivalent for the same. No leave of absence was granted or allowed to the claimant, for the reason that under the rules adopted by the Public Printer regarding leaves of absence persons temporarily employed were not granted leave.

5 V.

All employees of the Government Printing Office in service from the 1st of July, 1886, to the 30th of June, 1895, whether permanent or temporary, have been paid for all accrued but unused leaves of absence. The last of the appropriations for such unused leaves was that of fifty-seven thousand eight hundred and fifty-nine dollars and sixty cents ($57,859.60), made by the act of July 19, 1897 (30 Stat. L., 134), and was based on an estimate of the Public Printer, who in transmitting the same to the Senate informed that body that it included "many employees whose terms of service in the office were only for periods of less than one year," and that "the amounts of pro rata leave which accrued to such persons are herewith included in the respective years in which they were earned."

CONCLUSION OF LAW.

Upon the foregoing findings of fact the court decides, as a conclusion of law, that the plaintiff is entitled to recover the sum of $175.20.

By THE COURT.

IV.—*Opinion of the Court.*

HOWRY, J., delivered the opinion of the court:

This case presents the question of the right of a temporary employee of the Government Printing Office, serving for fractional parts of a series of years, to pro rata pay for unused leaves of absence accumulated during

the different periods of his employment. The issue involves a construction of the public printing act of June 11, 1896 (chap. 320, par. 10, 2d Supp. Rev. Stat., 526), and derives its chief importance from the circumstance that the cause is one of a class of cases affecting many hundreds of employees of the printing office in their relation to the Public Printer.

Plaintiff served between December 31, 1895, and April 27, 1900, for five separate periods of time, the shortest of which was twenty-nine days, and the longest seven months and six days. He was paid at the rate per day fixed by law. He was not granted any leave of absence nor pay for any unused leave whereby he was prevented from increasing his compensation for the length of time he might have been absent. He now sues for pay at the rate he was paid during the entire period of his service, or for a total of one year eight months and twelve days of work, at thirty days each year, amounting in all to fifty-one days.

In Harrison's case (26 C. Cls. R., 259) it was held that the intent of the legislation authorizing leaves of absence and regulating pay was only to grant leaves of absence but not to grant double pay for such leaves as the employees might take under the law but did not receive. That decision was founded on statutes which authorized the Congressional (now the Public) Printer to employ at such rates of wages as he might deem for the interest of the Government and just to the persons employed, such proof readers, compositors, pressmen, laborers, and others as might be necessary (sec. 3763, Revised Statutes); which authorized leaves of absence, with pay, not exceeding fifteen days in any one fiscal year, to employees by the piece or otherwise after the service of one year, under regulations and at such time as the Public Printer might designate (act of June 30, 1886, chap. 572, 1st Supp. Rev. Stat., 499), and which made it
6 lawful to allow pro rata leave to those serving fractional parts of a year, the annual leave being in the meantime extended to thirty days in each fiscal year (act of August 1, 1888, chap. 722, 1st Supp. Rev. Stat., 600).

While the decision in Harrison v. The United States is accepted by learned counsel for plaintiff as a correct exposition of the law at the time it was rendered, nevertheless it is contended that subsequent legislation has made the views there announced inapplicable to a claim for unused vacation pay. The subsequent legislation vital to be considered is as follows:

"The employés of the Government Printing Office, whether employed by the piece or otherwise, shall be allowed leaves of absence with pay to the extent of not exceeding thirty days in any one fiscal year under such regulations and at such times as the Public Printer may designate at the rate of pay received by them during the time in which said leave was earned; but such leaves of absence shall not be allowed to accumulate from year to year. Such employés as are engaged on piecework shall receive the same rate of pay for the said thirty days' leave as will be paid to day hands: Provided, That those regularly employed on the Congressional Record shall receive leave with pay at the close of each session, pro rata for the time of such employment: And provided further, That it shall be lawful to allow pay for pro rata leave to those serving fractional parts of a year; also to pay for pro rata leave of absence to employés of the Government Printing Office in any fiscal year notwith-

standing the fact that thirty days' leave of absence with pay may have been granted to such employees in that fiscal year on account of service rendered in a previous fiscal year. And the Public Printer is hereby authorized to pay to the legal representatives of any employees who have died during the fiscal years of eighteen hundred and ninety-four, eighteen hundred and ninety-five, eighteen hundred and ninety-six, or may hereafter die, who have or hereafter may have any accrued leave of absence due them as such employees, and said claims to be paid out of any unexpended balances of appropriations for the payment of leaves of absence to the employees of the Government Printing Office for the fiscal years eighteen hundred and ninety-four, eighteen hundred and ninety-five, eighteen hundred and ninety-six, and out of any future appropriations for leaves of absence." (2 Supp. R. S., 526, par. 10.)

This act of June 11, 1896, allows leaves of absence with pay to an extent not exceeding thirty days in any one fiscal year to the employees of the Printing Office, which includes those serving fractional parts of a year as well as day hands and others, but, like preceding statutes, under such regulations and at such times as the Public Printer may designate. Congress was again careful to limit the period of absence in any event, and at the same time to remit to the discretion of the Public Printer the duty of saying when an employee might take his vacation within the fiscal year. The right of the Public Printer to make rules and regulations in the premises was continued by the new statute in the same language as that employed in the old, so that the act under which this suit was brought was enacted with knowledge by Congress that under the rules and regulations which had been prescribed for the administration of the Printing Office the Public Printer might control the time of leaves and refuse the same in an exigency.

7 The second proviso in the act of 1896 plainly confers the right upon those serving fractional parts of a year to leave of absence with pay. Thus, if an employee serves six months he is ordinarily entitled to fifteen days' leave of absence with pay just as an employee serving a year continuously is entitled to thirty days' leave with pay. The language in this second proviso is new in that it provides for pay for pro rata leave to those serving fractional parts of a year. The provision was not in any of those acts under which Harrison's case was decided. Nor does the same phraseology appear in the act of June 19, 1894 (2 Supp. R. S., 193), which was reenacted in the act of March 2, 1895 (chap. 187, par. 3, 2 Supp. R. S., 427).

The public printing acts summarized in section 23, 2 Supp. R. S., 344, contain a proviso that it shall be lawful to allow pro rata leave to those serving fractional parts of a year. There is an omission to state that it shall be lawful to allow pay for pro rata leave to those serving fractional parts of a year, and it is open to question under that kind of a proviso whether an unused leave could be paid for by an equivalent in money.

In saying "that it shall be lawful to allow pay for pro rata leave" the new statute imposed the general obligation on the Public Printer to allow the pro rata leave of absence with pay in kind on those serving fractional parts of a year. Though this statute is only permissive in terms the authority must be construed to be a duty in general. The words "it shall be lawful" are mandatory. (Mason v. Fearson, 9 How.,

248; Supervisors v. United States, 4 Wall., 435; Mayor of New York v. Furze, 3 Hill, 614; Bell v. Caldwell, 107 Pa. St., 48; Stines v. Franklin Co., 48 Mo., 167; Blake v. R. R., 39 N. H., 435; Arnold v. Pawtucket, 41 Atlantic Reporter, 576; Leavenworth v. Platte Co., 42 Mo., 174; State v. Newark, 4 Dutcher, 491; Hugg v. Camden, 39 N. J. Law, 620; Sifford v. Morrison, 53 Md., 14.)

But do these words entitle a temporary employee to recover the sums covering such accrued but unused leaves?

If we shall hold that the Public Printer could at will refuse the leave of absence in kind as well as the pay for the allowed but unused leaves, then employees serving fractional parts of a year would at the will of the Public Printer be deprived of both the leave and the pay. But this was not intended. It was the purpose, if language means anything, for fractional time workers to have the pro rata leave with the pay for the time of such leave as the employee might be entitled to have. We must presume the Congress meant what is said. That is, it was meant that a per cent should be added to the rate of pay in diminishing the work but continuing the pay as if the work was not curtailed.

It is true this legislation is not in line with the original purpose for which leaves of absence were granted. That purpose was well shown to be in Harrison's case to restrict work but not to increase compensation. Anomalous and inexpedient as it may seem to be to abandon the policy of the law pertaining to leaves, the underlying reason of which has always been to afford rest and recreation to steady workers, we think it has been done by the innovation that directs the leave in kind to those serving fractional parts of a year with pro rata pay for the limited term of service.

Where, then, a leave has not been granted in the case of a temporary employee detained because of the exigencies of the public printing service or discharged without fault on his part because his services are not needed, the payment of a money equivalent for the unused pro rata leave is conferred by the statute. If the temporary employee is entitled to leave with pay for that pro rata period of recreation, it follows that he should have pay for the leave denied to him.

A rule that those serving fractional parts of a year may withdraw at pleasure and yet claim an equivalent in pay might defeat the purpose of the law, or at least, in times of emergency, embarrass the operations of an office peculiarly dependent for its efficiency upon proper rules and regulations which the law authorizes its head to prescribe. Leave of absence ordinarily implies a return to official duty, and a discharge for cause or withdrawal at the pleasure of the employee may not impose the same consequences as in those cases where the employee is without fault. But whether a temporary employee can at his own pleasure sever his connection with the Public Printing Office and then claim a pro rata leave with pay, and whether such an employee practically severs that connection by misconduct so that his discharge therefor results from his own acts at a time when his service is needed and yet claim the pro rata leave with pay, are questions not in this case, and are therefore not decided.

If the question of whether plaintiff was discharged because of his fault is material to the decision of the issue involved, the burden of that proof rests upon the defendants, and plaintiff is not bound to show that he was discharged through no fault of his own. Judgment will therefore be entered for plaintiff in the sum of $175.20.

8 V.—*Judgment of the court.*

ARTHUR B. BARRINGER, vs. THE UNITED STATES. } No. 21940.

At a Court of Claims held in the city of Washington on the second day of December, 1901, judgment was ordered to be entered as follows:

The court, on due consideration of the premises, find for the claimant, and do order, adjudge, and decree that the claimant, Arthur B. Barringer, do have and recover of and from the United States the sum of one hundred and seventy-five dollars and twenty cents ($175\frac{20}{100}$).

BY THE COURT.

9 VI.—*Application for and allowance of appeal.*

From the judgment rendered in the above-entitled cause, on the second day of December, 1901, in favor of the claimant, the defendants, by their Attorney-General, on the 4th day of February, 1902, make application for, and give notice of, an appeal to the Supreme Court of the United States.

L. A. PRADT,
Asst. Attorney-General.

Filed February 4, 1902.

At a Court of Claims held February 17, 1902, it was ordered—

That the application of the defendants for allowance of appeal be allowed as prayed for.

BY THE COURT.

10 Court of Claims.

ARTHUR B. BARRINGER vs. UNITED STATES. } No. 21940.

I, John Randolph, assistant clerk of the Court of Claims, hereby certify that the foregoing are true transcripts of the pleadings in the above-entitled cause, of the findings of fact filed by the court, of the opinion of the court, of the judgment of the court, of the application for and allowance of appeal to the Supreme Court of the United States.

In testimony whereof I have hereunto set my hand and affixed the seal of said Court of Claims this 20th day of February, A. D. 1902.

[SEAL.]

JOHN RANDOLPH,
Asst. Clerk Court of Claims.

(Indorsement on cover:) File No. 18419, Court of Claims. Term No. 566. The United States, appellant, *vs.* Arthur B. Barringer. Filed February 24, 1902.